



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2012-0244; FRL-9657-9]

**Approval and Promulgation of Implementation Plans; State of
Arizona; Prevention of Air Pollution Emergency Episodes**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) revision submitted by the State of Arizona to address the requirements regarding air pollution emergency episodes in Clean Air Act (CAA or Act) section 110(a)(2)(G). Section 110(a)(2)(G) of the Act requires that each SIP provide for authority comparable to that in section 303 of the Act and adequate contingency plans to implement such authority. EPA is proposing to approve Arizona's SIP revision as meeting the authority and contingency plans for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS or standards).

DATES: Written comments must be received on or before **[Insert date 30 days after publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R09-OAR-2012-0244, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail*: buss.jeffrey@epa.gov
3. *Fax*: 415-947-3579
4. *Mail or deliver*: Jeffrey Buss (AIR-2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901. Deliveries are only accepted during the Regional Office's normal hours of operation.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an anonymous access system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your e-mail address will be automatically captured and included as part of the public

comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: Generally, documents in the docket for this action are available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at www.regulations.gov, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Jeffrey Buss, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX, (415) 947-4152, buss.jeffrey@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms "we," "us," and "our" refer to EPA.

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I. Background

On July 18, 1997, EPA promulgated revised primary and secondary NAAQS for ozone which set the acceptable level of ozone in the ambient air at 0.08 parts per million (ppm), averaged over an 8-hour period. 62 FR 38856; 40 CFR 50.10. This proposed action is in response to the promulgation of these ozone standards.

Section 110(a)(1) of the CAA requires states to submit SIPs to address a new or revised NAAQS within three years after promulgation of such standards, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the elements that these SIPs must address, as applicable, including section 110(a)(2)(G) regarding authority to address air pollution emergency episodes and adequate contingency plans to implement such authority (Emergency Episode Plans). EPA last approved an Emergency Episode Plan requirement into the Arizona SIP on September 28, 1982 (47 FR 42572).

On October 2, 2007, EPA issued a guidance memorandum that provides recommendations to states for making submissions to meet, among other things, the requirements of section 110(a)(2)(G) for the 1997 8-hour ozone standards. See Memorandum from William T. Harnett, EPA Air Quality Policy Division, to Air

Division Directors, Regions I-X, "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards," October 2, 2007 (2007 Guidance).

This proposed action addresses only Arizona's submittal to satisfy the Emergency Episode Plan requirements of CAA section 110(a)(2)(G) and does not apply to the remaining "infrastructure" SIP elements of CAA section 110(a)(2) for the 1997 8-hour ozone NAAQS. We intend to evaluate and act upon Arizona's SIP submittal addressing these additional requirements of CAA section 110(a)(2) for the 1997 8-hour ozone NAAQS in separate actions.

II. EPA's Evaluation of the SIP Revision

A. SIP Procedural Requirements

CAA sections 110(a)(1) and (2) and section 110(l) require that each revision to a SIP be adopted by the state after reasonable notice and public hearing. EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, subpart F. These requirements include publication of notices, by prominent advertisement in the relevant geographic area, of a public hearing on the proposed revisions, a public comment period of at least 30 days, and an opportunity for a public hearing.

On August 15, 1994, the Arizona Department of Environmental Quality (ADEQ) submitted section 220 of Chapter 2, Title 18 of the Arizona Administrative Code (R18-2-220), "Air pollution emergency episodes" (hereafter referred to as "Arizona Emergency Episode Plan") to EPA for approval as part of the Arizona SIP.¹ ADEQ's August 15, 1994 submittal includes public process documentation for the Arizona Emergency Episode Plan, among other regulations. In addition, the SIP revision includes documentation of a duly noticed public hearing held on August 9, 1994 on the proposed version of the Arizona Emergency Episode Plan. We find that the process followed by ADEQ in adopting the Arizona Emergency Episode Plan complies with the procedural requirements for SIP revisions under CAA section 110 and EPA's implementing regulations.

B. Substantive Emergency Episode Plan Requirements

Section 110(a)(2)(G) of the CAA requires that each SIP provide for authority comparable to that in CAA section 303 ("Emergency Powers") and adequate contingency plans to implement such authority. EPA's implementing regulations in 40 CFR part

¹ See transmittal letter dated August 15, 1994, from Edward Z. Fox, Director, ADEQ, to Felicia Marcus, Regional Administrator, U.S. EPA Region IX, with attachments. We note that although the subject line of the transmittal letter identifies this SIP submittal as related to "New Source Review and Prevention of Significant Deterioration (NSR/PSD) Program for Major Sources and Major Modifications and New Source Review (NSR) for Minor Sources," Attachment 6 of this submittal includes the Arizona Emergency Episode Plan, which is not related to NSR or PSD.

51, subpart H ("Prevention of Air Pollution Emergency Episodes"), establish a "priority" classification system under which each region in a state is classified separately for each of the following criteria pollutants, based on ambient concentrations of the pollutant: sulfur dioxide (SO₂), particulate matter of 10 microns or less (PM₁₀), carbon monoxide (CO), nitrogen dioxide (NO₂), and ozone. Subpart H specifies the requirements that each contingency plan must meet, based on the priority classification of the area in which it applies. See 40 CFR 51.152. Subpart H also requires that each contingency plan for a "priority I" area provide, at a minimum, for taking action necessary to prevent ambient pollutant concentrations at any location in such region from reaching specified "significant harm levels" (SHL). 40 CFR 51.151. The SHL for ozone is 1,200 micrograms per cubic meter (ug/m³) or 0.6 ppm over a 2-hour average. *Id.*

EPA's 2007 Guidance addressed, among other things, the CAA section 110(a)(2)(G) requirements for the 1997 8-hour ozone NAAQS. The 2007 Guidance stated that the SHL for the 1997 8-hour ozone NAAQS would remain unchanged as 0.60 ppm over a 2-hour average, as indicated in 40 CFR section 51.151, and that the existing ozone-related provisions of 40 CFR part 51, subpart H remained appropriate for purposes of implementing the 1997 8-

hour ozone standard. See 2007 Guidance at 5. We have evaluated the Arizona Emergency Episode Plan in accordance with the requirements of 40 CFR part 51, subpart H, as applicable for ozone purposes, consistent with EPA's recommendations in the 2007 Guidance. Based on this evaluation, we propose to fully approve the Arizona Emergency Episode Plan as satisfying the requirements of CAA section 110(a)(2)(G) and 40 CFR part 51, subpart H, for the 1997 8-hour ozone NAAQS. Our technical support document (TSD), which is available in the docket for today's proposed rule, contains a more detailed discussion of our evaluation.

C. Sections 110(l) and 193 of the Act

Section 110(l) of the Act prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the Act. Section 193 of the Act prohibits the modification, in a nonattainment area, of any SIP-approved control requirement in effect before November 15, 1990, unless the modification "insures equivalent or greater emissions reductions of such air pollutant."

The Arizona Emergency Episode Plan is substantively identical to the CAA section 110(a)(2)(G) rule currently

approved into Arizona's SIP (R9-3-219, "Air pollution emergency episodes"), which EPA approved in 1982 (47 FR 42572, September 28, 1982), with one exception which makes it more stringent than the SIP program. We propose to determine that our approval of this submittal would comply with CAA section 110(l), because the proposed SIP revision would not interfere with the ongoing process for ensuring that requirements for RFP and attainment of the NAAQS are met, and the submitted SIP revision is more stringent than the rule previously approved into the SIP. We also propose to determine that our approval of the submittal would comply with CAA section 193, to the extent it applies, because the SIP revision would insure equivalent or greater emission reductions of ozone precursors compared to the SIP-approved rule. Our TSD contains a more detailed discussion of our evaluation.

III. EPA's Proposed Action

Under section 110(k) of the Clean Air Act, EPA is proposing to approve the SIP revision submitted by ADEQ on August 15, 1994, as meeting all applicable requirements of the CAA and EPA's regulations for the 1997 8-hour ozone NAAQS.

EPA is soliciting public comments on this proposal and will accept comments until the date noted in the "DATES" section above.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection,
Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting
and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: March 29, 2012 Keith Takata,
Acting Regional Administrator,
Region IX.

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